

Message Text

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PAGE 01 BONN 03207 01 OF 03 221951Z

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AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

USMISSION NATO BRUSSELS

C O N F I D E N T I A L SECTION 01 OF 03 BONN 03207

E.O. 11652: GDS

TAGS: PFOR PGOV EEC WB UR GW US UK FR

SUBJECT: INCLUSION OF BERLIN IN EC/SOVIET FISHERIES
AGREEMENT

REFS: (A) BONN 3068; (B) STATE 27507; (C) BONN 3015

BEGIN SUMMARY. IN REACTING TO THE FRG-PROPOSED TACTICS
FOR ASSURING THE INCLUSION OF BERLIN IN THE EC/SOVIET
FISHERIES AGREEMENT, THE UK BONN GROUP REP HAS STRESSED
LONDON'S CONCERN THAT INSISTENCE ON CLARITY MAY
JEOPARDIZE THE NEGOTIATIONS, THUS HELPING NEITHER THE
EC NOR BERLIN. DOUBTING THAT THE SOVIETS NEED THE AGREE-
MENT BADLY ENOUGH TO CONCEDE A POINT OF PRINCIPLE,
LONDON BELIEVES IT BEST TO ALLOW THE UNELABORATED AREA
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PAGE 02 BONN 03207 01 OF 03 221951Z

OF APPLICATION CLAUSE TO SPEAK FOR ITSELF. WHILE THE
FRENCH WOULD ALSO PREFER THAT APPROACH, THEY WOULD BE
PREPARED TO HAVE THE EC NEGOTIATOR POINT OUT PRIVATELY
TO THE SOVIETS THAT THAT CLAUSE COVERS BERLIN. THE FRG
REPS, REFLECTING A POSITION APPROVED BY GENSCHER, CON-
TINUE TO BELIEVE THAT THERE IS A GOOD CHANCE THAT THE
SOVIETS WILL ACCEPT THE EC POSITION ON BERLIN IN SILENCE.

THEY ALSO FEEL THAT IF THE ISSUE IS NOT RESOLVED IN THE PRESENT NEGOTIATIONS THERE IS NO HOPE FOR CLARITY IN ANY FUTURE EC-CEMA NEGOTIATIONS. WE ARE UNABLE TO PREDICT WHETHER GENSCHER WILL RECONSIDER, IN THE LIGHT OF THE BRITISH AND FRENCH POSITIONS, OR WILL CONTINUE TO ASK THE REST OF THE EC TO STICK WITH THE GERMANS IN THEIR ATTEMPT TO MAKE A BREAKTHROUGH WITH THE SOVIETS ON THE BERLIN-EC RELATIONSHIP. END SUMMARY.

1. AT AN AFTERNOON BONN GROUP MEETING ON FEBRUARY 22, ALLIED REPS PRESENTED INSTRUCTED REACTIONS TO THE FRG PROPOSAL (REF C) FOR ASSURING INCLUSION OF BERLIN IN THE EC/SOVIET FISHERIES AGREEMENT. NEITHER THE BRITISH NOR THE FRENCH REP WAS PREPARED TO ACCEPT FULLY THE FRG PROPOSALS.

2. UK REP (CARTER) STATED THAT HIS INSTRUCTIONS STRESSED THAT LONDON WAS ANXIOUS TO BE AS HELPFUL AS POSSIBLE IN FINDING A SOLUTION TO THE PROBLEM. LONDON DID NOT, HOWEVER, SEE THE FISHERIES NEGOTIATIONS AS THE MOST PROPITIOUS TEST CASE, SINCE THERE WAS LITTLE IF ANY PRACTICAL SIGNIFICANCE FOR BERLIN IN THE FISHERIES AGREEMENT. IT WOULD BE DIFFICULT TO JUSTIFY TO OFFICIAL AND PUBLIC OPINION ANY OBSTRUCTION OF A FISHERIES AGREEMENT OVER BERLIN.

3. CARTER CONTINUED THAT LONDON WAS, HOWEVER, WILLING TO EXAMINE ANY PROPOSAL FOR MAKING EXPLICIT THE INCLUSION OF BERLIN, BUT INSISTED THAT WE BE AWARE OF CONFIDENTIAL

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PAGE 03 BONN 03207 01 OF 03 221951Z

THE PROBABLE CONSEQUENCES OF THE ACTION CHOSEN. THE FCO WONDERED WHETHER THE GERMAN WISH TO MAKE EXPLICIT THE COVERAGE OF BERLIN WAS ATTAINABLE -- I.E., WHETHER THE SOVIETS FELT THE NEED FOR A FISHERIES AGREEMENT ENOUGH TO CONCEDE AN IMPORTANT POINT OF PRINCIPLE. IF THE EC DID DECIDE TO MAKE BERLIN A STICKING POINT, THERE WOULD THUS ALMOST CERTAINLY BE NO FISHERIES AGREEMENT WITH THE SOVIETS OR WITH THE OTHER EASTERN EUROPEAN COUNTRIES.

CONFIDENTIAL

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PAGE 01 BONN 03207 02 OF 03 221957Z
ACTION EUR-12

INFO OCT-01 ISO-00 EURE-00 SSO-00 NSCE-00 USIE-00 INRE-00
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C O N F I D E N T I A L SECTION 02 OF 03 BONN 03207

4. CARTER STATED THAT THE MOST THAT COULD BE HOPED FOR, IN LONDON'S VIEW, WAS A SOLUTION WHICH PRESERVED THE WESTERN POSITION ON BERLIN WITHOUT FORCING THE SOVIETS TO GO ON RECORD WITH AN EXPLICIT REJECTION OF THE INCLUSION OF BERLIN IN THE AGREEMENT.

5. AGAINST THIS BACKGROUND, LONDON OFFERED FOR CONSIDERATION THREE OPTIONS:

A. ALLOW THE TERMS OF ARTICLE 9 (THE "AREA OF APPLICATION" CLAUSE) TO SPEAK FOR ITSELF DURING THE NEGOTIATIONS, AND TAKE AN EARLY OPPORTUNITY AFTER THE
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 BONN 03207 02 OF 03 221957Z

NEGOTIATIONS TO MAKE CLEAR THAT THE EC UNDERSTOOD THAT ARTICLE 9 MEANT THAT THE AGREEMENT APPLIED TO BERLIN. ONE POSSIBILITY FOR CLARIFICATION WOULD BE TO ARRANGE FOR A QUESTION TO BE POSED IN THE EUROPEAN PARLIAMENT. LONDON PREFERRED THIS OPTION, THINKING IT WOULD SERVE THE INTERESTS OF BERLIN BEST.

B. ELIMINATE THE PROPOSED GERMAN SECOND STAGE, AN INTERPRETATIVE STATEMENT, BUT HAVE THE EC NEGOTIATOR INFORM THE SOVIETS UNOFFICIALLY AND ON THE MARGIN OF THE NEGOTIATIONS THAT THE EC REGARDED ARTICLE 9 AS COVERING BERLIN. LONDON FOUND THIS A LESS ATTRACTIVE OPTION, BELIEVING THAT THE SOVIETS WOULD FEEL COMPELLED TO STATE THEIR OWN VIEWS ON THE SUBJECT. EVEN IF THEY DID SO IN THE SAME INFORMAL WAY, THIS WOULD NOT MEET THE GERMAN REQUIREMENT FOR AN UNCONTESTED STATEMENT ON APPLICATION OF THE AGREEMENT TO BERLIN.

C. USE ONLY THE FIRST TWO STAGES PROPOSED BY THE FRG -- I.E., ARTICLE 9 PLUS THE INTERPRETATIVE STATEMENT -- WITHOUT TELLING THE SOVIETS SPECIFICALLY THAT THIS MEANT BERLIN. IF THE SOVIETS SUBSEQUENTLY CLAIMED THAT THE AGREEMENT DID NOT APPLY TO BERLIN, IT WOULD BE POSSIBLE FOR THE ALLIES TO REFER TO THE INTERPRETATIVE STATEMENT AND QUOTE THE ROMANIAN PRECEDENT AS EVIDENCE THAT BERLIN WAS CLEARLY INTENDED. IN LONDON'S VIEW, HOWEVER, THE SOVIETS WOULD BECAUSE OF THE ROMANIAN PRECEDENT PROBABLY SEE THE MEANING OF THE INTERPRETATIVE STATEMENT AND REACT DURING THE NEGOTIATIONS.

6. CARTER CONCLUDED THAT LONDON'S MAIN OBJECTIVE WAS TO AVOID THE RISK OF OBTAINING AN UNACCEPTABLE SOVIET RESPONSE. OPTION (A) ABOVE WOULD GIVE THE SOVIETS NO OPPORTUNITY FOR SUCH A RESPONSE.

CONFIDENTIAL

CONFIDENTIAL

PAGE 03 BONN 03207 02 OF 03 221957Z

7. FRENCH REP (BOISSIEU) PRESENTED HIS INSTRUCTIONS ESSENTIALLY IN THE SAME MANNER AS REPORTED IN REF (A). HE SAID HE COULD GO ALONG WITH THE BRITISH FIRST PREFERENCE (OPTION A ABOVE) BUT WOULD ALSO BE PREPARED TO WORK ON A FORMULATION THAT WOULD INCLUDE THE FIRST AND THIRD STAGES OF THE FRG THREE-STAGE PROPOSAL.

8. US REP REPORTED INSTRUCTIONS IN PARA L.A, REF (B). ASKED BY FRG REP (HENZE) FOR AN INTERPRETATION AS TO WHETHER THIS MEANT THAT THE US CONSIDERED ARTICLE 9 SUFFICIENT TO COVER BERLIN, US REP ANSWERED AFFIRMATIVELY, ON THE BASIS OF THE FIRST SENTENCE OF PARA L.B, REF (B).

9. IN THE ENSUING DISCUSSION, HENZE REITERATED THAT IT WOULD BE IMPOSSIBLE TO RECEIVE MORE IN SUBSEQUENT EC/CEMA AGREEMENTS THAN WE OBTAIN IN THE FISHERIES AGREEMENT. HE STRESSED THAT THE FRG CONSIDERED ITS

PROPOSAL THE MINIMUM NECESSARY FOR COVERING BERLIN.

10. ASKED TO EXPLAIN WHAT THE INTERPRETATIVE STATEMENT WOULD ADD TO THE AREA OF APPLICATION CLAUSE, IF THERE WERE AGREEMENT ON POINTING OUT ORALLY TO THE SOVIETS THAT BERLIN WAS INCLUDED, HENZE SEVERAL TIMES GAVE AN EXPLANATION WHICH ALLIED BONN GROUP REPS HAD DIFFICULTY FOLLOWING. THE GERMAN LINE OF REASONING WAS THAT THE INTERMEDIATE STEP REPRESENTED BY THE INTERPRETATIVE STATEMENT WOULD MAKE IT EASIER FOR THE SOVIETS TO ACCEPT THE FINAL, THIRD STEP REFERENCE TO BERLIN. THE SOVIETS FEAR "AUTOMATICITY," WHICH WOULD BE INVOLVED IN THE SIMPLE AREA OF APPLICATION CLAUSE. THE INTERPRETATIVE STATEMENT, WITH REFERENCE TO COMMON FISHERIES POLICY, WOULD ADD AN AD HOC CHARACTER TO THE APPLICATION OF THIS PARTICULAR AGREEMENT TO

CONFIDENTIAL

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PAGE 04 BONN 03207 02 OF 03 221957Z

CONFIDENTIAL

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PAGE 01 BONN 03207 03 OF 03 222001Z
ACTION EUR-12

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C O N F I D E N T I A L SECTION 03 OF 03 BONN 03207

BERLIN. DUSIBERG (FRG LEGAL ADVISOR) ADDED THAT ARTICLE 9 IN ITSELF WAS NOT ADEQUATE BECAUSE THE SOVIET POSITION, THAT THE TREATY OF ROME WAS NOT APPLICABLE TO BERLIN, WAS QUITE CLEAR. THE WORDING OF THE INTERPRETATIVE STATEMENT, ON THE OTHER HAND, WAS LESS EQUIVOCAL, IN THAT IT REFERRED TO TERRITORIES WHERE LAWS AND REGULATIONS OF THE EC "WERE APPLIED."

11. DUISBERG ALSO REJECTED THE IDEA OF RESTING ON ARTICLE 9 ALONE WHEN WE KNOW THAT THE SOVIET POSITION IS THAT THE EC TREATIES ARE NOT APPLICABLE TO BERLIN. LEAVING THE RECORD IN THAT FORM WOULD MEAN THAT THE PARTIES WERE AGREEING ON A DISSENSUS, THE LEGAL
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 BONN 03207 03 OF 03 222001Z

CONSEQUENCES OF WHICH WOULD BE THAT BERLIN WAS NOT COVERED IN THE AGREEMENT.

12. DESPITE THIS REASONING, BOISSIEU CONTINUED TO ARGUE THAT THE PROPOSED INTERPRETATIVE STATEMENT WAS NOT ONLY SUPERFLUOUS BUT DOWN RIGHT HARMFUL. (COMMENT: WE TEND TO AGREE THAT BOISSIEU'S ARGUMENTS HAVE MERIT. AS WE SEE IT, THERE ARE AT LEAST THREE DEFECTS IN THE INTERPRETATIVE STATEMENT AS WORDED IN PARA 3.A, REF C: (A) IT IMPLIES THAT ARTICLE 9 IS NOT IN ITSELF ENOUGH TO COVER BERLIN, (B) IT GIVES THE SOVIETS AN OPPORTUNITY TO ASK WHAT THE EC COMMON FISHERIES POLICY HAS TO DO WITH BERLIN, AND (C) IT RAISES THE QUESTION OF WHETHER IT IS THE LAWS AND REGULATIONS OF THE FRG WHICH ARE APPLIED IN BERLIN, AS OPPOSED TO BERLIN LEGISLATION. END COMMENT)

13. THROUGHOUT THE DISCUSSION, FRG REPS EXPRESSED OPTIMISM THAT THE SOVIET INTEREST IN A FISHERIES AGREEMENT WAS GREAT ENOUGH TO CAUSE THE SOVIETS TO ACCEPT AN INFORMAL STATEMENT OF THE EC POSITION ON BERLIN WITHOUT CONTESTING IT. THEY DID NOT ATTEMPT TO ANSWER ALLIED QUESTIONS AS TO WHAT THE NEXT STEP WOULD BE IF THE SOVIETS, DESPITE EXPECTATIONS, STATED THAT BERLIN COULD NOT BE INCLUDED IN THE AGREEMENT.

14. NEAR THE CONCLUSION OF THE MEETING, BOISSIEU ASKED HENZE WHAT HAD CHANGED SINCE NOVEMBER 26, 1976, WHEN GENSCHER HAD TOLD GUIRINGAUD IN BILATERAL

CONVERSATIONS (SOME ASPECTS OF WHICH WERE REPORTED IN 76 BONN 21255) THAT THE GERMANS THOUGHT THAT ALL THAT WAS REQUIRED IN AN EC/CEMA AGREEMENT WAS AN AREA OF APPLICATION CLAUSE. HENZE SAID HE DID NOT HAVE A REPORT OF THAT CONVERSATION.

15. HENZE STATED IN CONCLUSION THAT HE COULD ONLY
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CONFIDENTIAL

PAGE 03 BONN 03207 03 OF 03 222001Z

REPORT THE ALLIED POSITIONS TO THE FOREIGN MINISTER. HE RECALLED THAT THE FRG POSITION AS PREVIOUSLY PRESENTED IN THE BONN GROUP HAD BEEN APPROVED PERSONALLY BY GENSCHER.

16. COMMENT: WE ARE UNABLE TO PREDICT AT THIS STAGE WHETHER THE FRG WILL REVISE ITS POSITION. ACCORDING TO CARTER, THE BRITISH POSITION WAS EXPLAINED FULLY DURING BILATERAL CONVERSATIONS IN LONDON ON FEBRUARY 21 BETWEEN DAVID OWEN AND FRG FONOFF MINISTER OF STATE DOHNANYI. OWEN HAD SAID THAT ARTICLE 9 STANDING ALONE SHOULD MEET THE GERMAN REQUIREMENT, AS THERE WAS OTHERWISE NO NEED FOR THAT ARTICLE AND IT WAS CLEAR THAT IT APPLIED TO BERLIN. HE HAD STATED THAT IF THE SOVIETS MADE AN ISSUE OF BERLIN, THERE MIGHT WELL BE NO FISHERIES AGREEMENT. DOHNANYI HAD SIMPLY TAKEN NOTE OF THE BRITISH POSITION. OUR IMPRESSION IS THAT THE FRG BONN GROUP REPS ARE FAITHFULLY ECHOING GENSCHER'S VIEW THAT THE BERLIN ISSUE MUST BE SQUARELY FACED IN THESE NEGOTIATIONS IF THERE IS EVER TO BE ANY HOPE OF A BREAKTHROUGH IN THE DISPUTE WITH THE SOVIETS OVER THE APPLICABILITY OF EC TREATIES TO BERLIN. WISCHNEWSKI'S REMARKS TO THE AMBASSADOR LAST WEEK INDICATE THAT THE CHANCELLERY IS ALSO AGREED ON THE IMPORTANCE OF HAVING BERLIN INCLUDED IN THE FISHERIES AGREEMENT. THE GOVERNMENT WILL AT A MINIMUM HAVE TO BE IN A POSITION TO ASSURE THE BUNDESTAG THAT THE AGREEMENT COVERS BERLIN. THERE WOULD APPEAR, HOWEVER, TO BE A CERTAIN LATITUDE FOR MANEUVER BETWEEN THAT BASIC NEED AND THE PRESENT GENSCHER POSITION.
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